Syarikat Mohd Noor Yusof Sdn Bhd v Polibina Engineering Enterprise Sdn Bhd (in liquidation)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO T–02–830 OF 1999
DENIS ONG, MOHD GHAZALI AND ARIFFIN JAKA JJCA
27 JANUARY 2005

Companies and Corporations — Winding up — Disputed debt — No judgment obtained — Notice under s 218(2)(a) served — Whether debt must be proved — Whether should have exhausted all remedies under contract before proceeding to wind up — Appellant appeared to be solvent — Whether proper case to wind up appellant — Companies Act 1965 s 218(2)(a)

The appellant was the contractor for certain works and appointed the respondent (subsequently went into liquidation) as the main sub-contractor. The respondent alleged that the appellant was indebted to it the sum of RM896,378.18 ('the said sum') under several certificate for progress of payments and a certificate for final payments for work done. The respondent delivered a notice of indebtedness pursuant to s 218(2)(a) of the Companies Act 1965 ('the Act') to the appellant at its registered office. The appellant submitted that the works were done by other contractors who have been paid and the fact that the respondent had abandoned the works and was wound up, there was no debt due to the respondent from the appellant. The respondent in liquidation then filed a petition to wind-up the appellant which was allowed by the court. The appellant appealed.

Held, allowing the appeal with costs:

(1) It is not provided under the Act that a petitioner must be armed with a judgment debt prior to the filing of a petition to wind up a company. In this matter, there was no judgment debt and the debt claimed was disputed. Therefore, the notice of indebtedness issued under s 218 was not evidence of the debt (see para 25).

(2) The appellant's paid-up capital was RM8,395,902. The respondent must substantiate its claim that the appellant was unable to pay its debt. The presumption that the appellant was unable to pay its debts could not arise under the circumstances as the appellant seemed to be solvent. The indebtedness was clearly disputed and the sum referred to in the respondent's notice issued under s 218(2) was not a judgment sum. The notice was nothing more than a letter of demand sent by the respondent's solicitors, the purpose of which was to invoke the presumption of inability to pay its debts. The respondent would still have to prove that it was a creditor and that the sum so stated in the notice was owing and so due (see para 26).

(3) This was not a proper case to grant an order of winding up. One of the issues which need to be determined was whether it was the respondent and not other sub-contractors which completed the works and consequently whether the

appellant paid directly to the respondent or to the sub-contractors for work done. The respondent had not exhausted all remedies available to them as provided under the said contracts. The dispute should be referred to the superintending officer or to arbitration as the case may be as provided for under the said contracts. There was nothing to prevent the respondent from filing a writ against the appellant if everything else fails. A winding up petition is not a legitimate means of seeking to enforce payment of a debt which is disputed (see para 27).

[Bahasa Malaysia summary

Perayu adalah kontraktor untuk kerja-kerja tertentu dan telah melantik responden (yang kemudiannya telah dilikuidasikan) sebagai sub kontraktor utama. Responden mendakwa bahawa perayu berhutang dengannya sebanyak RM896,378.18 ('jumlah tersebut') di bawah beberapa sijil bayaran berkala dan sijil bayaran akhir untuk kerja-kerja yang dilakukan. Responden telah menyampaikan satu notis keberhutangan menurut s 218(2)(a) Akta Syarikat 1965 ('Akta tersebut') kepada perayu di pejabat berdaftarnya. Perayu berhujah bahawa kerja-kerja yang dilakukan oleh kontraktor lain telah dibayar dan pada hakikatnya responden telah meninggalkan kerja-kerja tersebut dan telah digulungkan, tiada hutang yang perlu dibayar keada responden dari perayu. Responden yang dalam likuidasi kemudiannya telah memfailkan satu petisyen untuk menggulungkan perayu yang telah dibenarkan oleh mahkamah. Perayu telah membuat rayuan.

Diputuskan, membenarkan rayuan dengan kos:

(1) Tiada peruntukan di bawah Akta tersebut bahawa satu petisyen hendaklah beserta satu penghakiman hutang sebelum pemfailan petisyen untuk menggulung suatu syarikat. Dalam perkara ini, tiada penghakiman hutang dan hutang yang dituntut telah dipertikaikan. Oleh itu, notis keberhutangan dikeluarkan di bawah s 218 bukan bukti hutang (lihat perenggan 25).

(2) Modal berbayar perayu adalah RM8,395,902. Responden hendaklah mengesahkan tuntutannya bahawa perayu tidak mampu untuk membayar hutangnya. Anggapan bahawa perayu tidak mampu membayar hutangnya tidak boleh timbul di bawah keadaan tersebut kerana perayu kelihatan solven. Keberhutangan dengan jelas dipertikaikan dan jumlah yang dirujuk kepada dalam notis responden yang dikeluarkan di bawah s 218(2) bukan suatu jumlah penghakiman. Notis itu tidak lebih daripada sepucuk surat tuntutan yang dihantar oleh peguam responden, dengan tujuan menggunakan andaian ketidakupayaan untuk membayar hutangnya. Responden masih perlu membuktikan bahawa ia pemiutang dan bahawa jumlah sepertimana yang dinyatakan dalam notis itu adalah tertunggak dan perlu dibayar (lihat perenggan 26).

(3) Ini bukan satu kes yang sesuai untuk membenarkan satu perintah penggulungan. Salah satu persoalan yang perlu ditentukan adalah sama ada ia adalah responden dan bukan sub-kontraktor lain yang menyiapkan kerja-kerja itu dan seterusnya sama ada perayu telah membayar terus kepada responden

atau kepada sub-kontraktor untuk kerja-kerja yang telah disiapkan. Responden tidak menggunakan semua remedi yang sedia ada kepada mereka sepertimana yang diperuntukkan di bawah kontrak-kontrak tersebut. Pertikaian itu patut dirujuk kepada pegawai penguasa atau kepada penimbangtara mengikut kes sepertimana yang diperuntukkan di bawah kontrak-kontrak tersebut. Tidak ada apa-apa yang menghalang responden daripada memfailkan satu writ terhadap perayu jika semuanya gagal. Satu petisyen penggulungan bukan satu cara yang sah untuk menuntut bayaran hutang yang dipertikaikan (lihat perenggan 27).]

Notes

For cases on disputed debt, see 3(1) *Mallal's Digest* (4th Ed, 2003 Reissue) para 915–923.

Cases referred to

Ban Hong Co Ltd, Re [1959] MLJ 100 (refd)
Jurupakat Sdn Bhd v Kumpulan Good Earth (1973) Sdn Bhd [1988] 3 MLJ 49 (refd)
Sri Hartamas Development Sdn Bhd v MBF Finance Bhd [1992] 1 MLJ 313 (refd)

Legislation referred to

Companies Act 1965 ss 218(2)(a), 283
Rules of the High Court 1980 O 18 r 19

Appeal from: Companies Winding Up No 28–8 of 1998 (High Court, Kuala Terengganu)

Bastion Vendargon (Vendargon & Partners) for the appellant.
Harcharan Singh (Harcharan S Sidhu & Associates) for the respondent.

Mohd Ghazali JCA (delivering judgment of the court):

[1] On 18 November 1998, the respondent in liquidation filed a petition in the High Court, Kuala Terengganu to wind up the appellant. It would be appropriate to mention here that respondent was wound up by the High Court, Kuala Lumpur on 20 January 1997, viz, prior to the filing of the petition to wind up the appellant.

[2] On 16 October 1999, the High Court, Kuala Terengganu ordered that the appellant be wound up, that one Tee Siew Kai be appointed liquidator and that the respondent be allowed the costs of the petition to be paid by the liquidator out of the assets of the appellant. Against that decision the appellant appealed. We had on 14 September 2004 allowed the appeal with costs and set aside the order of winding up made against the appellant and we now give our reasons.

[3] The petition showed that the appellant's authorised capital is 10 million ordinary shares of RM1 each and its paid-up capital is RM8,395,902. The respondent alleged that the appellant is indebted to its goodself in the sum of

RM896,378.18 ('the said sum') under three certificates for progress payments and a certificate for final payment for work done.

[4] The facts showed that the appellant entered into two building contracts ('the said contracts') with the respondent to build shophouses, dated 28 September 1994 and terrace-houses, dated 15 October 1994 ('the works'). The appellant was the contractor for the works and appointed the respondent as the main sub-contractor. The petition, inter alia, reads:

1 The company is indebted to your petitioner in the sum of RM896.378.18 being the amount due on certificates of progress payment Nos 31, 32, and 33 in respect of the project known as 'Cadangan Pembangunan 572 Unit Rumah Teres Satu Tingkat Kos Rendah Fasa 1 hingga Fasa V di Kampung Fikri Mukim Chukai Kemaman, Terengganu Darul Iman' and certificate for final payment in respect of the project for the construction and completion of 105 units of double storey shop lots erected on Lot 5626 Mukim Chukai Kemaman Terengganu Darul Iman ('the Indebtedness'). A copy of the said certificates are annexed herewith and marked as exh 'A'.

2 Your petitioner has, pursuant to s 218 of the Act, on 20 October 1998 left a notice of demand dated 14 October 1998 ('the notice') at the registered office of the company, demanding the Indebtedness from the company. A copy of the said notice is annexed herewith and marked as exh 'B'. A copy of a statutory declaration by Jeeva s/o Murugiah declared on 22 October 1998 with respect to the due service of the notice is annexed herewith marked as exh 'C.

3 Over twenty-one (21) days has lapsed since the notice has been left as aforesaid, but the company has failed, refused and/or neglected to pay the Indebtedness nor has it secured or compounded the indebtedness to the satisfaction of your petitioner.

4 The company is therefore insolvent and unable to pay its debts.

5 In the circumstances, it is just and equitable that the company is wound up.

[5] The respondent's affidavit verifying the petition and which was sworn by the liquidator, one Lim Tin Huat, consisted of two paragraphs and it reads:

1 I am the liquidator of the petitioner and am duly authorised by the petitioner, a company duly incorporated under the Companies Act 1965 to affirm this affidavit for and on its behalf.

2 Such of the statements in the petition now produced and shown to me marked as exh 'A' as relating to the acts and deeds of the said petitioner are true and such of the statements as relate to the acts and deeds of any other person or person I believe to be true.

[6] In its affidavit in opposition, sworn by a director of the appellant, one Mohd Zaki bin Mohd Noor the appellant disputed all the matters stated in the petition and the affidavit verifying the petition and denied being indebted to the respondent. The appellant contended therein, inter alia, the following:

(i) the respondent, from the outset, encountered difficulties in carrying out the works and the appellant assisted by financial means and made direct payments to other contractors to do part of the works;

(ii) the respondent had ceased to do the works and a subcontractor, known as Tradeworks Construction & Trading ('TCT'), with the appellant's consent had carried out the works and was paid directly by the appellant;

(iii) the appellant was unaware that the respondent was wound up on 20 January 1997 and even up to 1 July 1997 when the respondent requested in writing that 10% of the progress claims be paid to its goodself whilst 90% be paid to TCT;

(iv) on 22 July 1997, the appellant's solicitors, upon making a search, confirmed that the respondent has been wound up and that the official receiver was appointed provisional liquidator.

[7] It is the stand of the appellant that as the works in question were done by other contractors who have been paid and the fact that the respondent had abandoned the works and was wound up, there is no debt due to the respondent from the appellant. The appellant further contended that upon receiving the respondent's notice issued pursuant to s 218 of the Companies Act 1965 ('the Act'), its solicitors had replied by letter refuting any debt. That letter, inter alia, reads:

> TAKE NOTICE that our client Syarikat Mohd Noor Yusof Sdn Bhd, a solvent company, hereby disputes the claim or debt owing to your client. Please confirm WITHIN SEVEN (7) DAYS from the receipt of this notice that your goodoffice will not be proceeding with winding up action against our client failing which we will take necessary steps to protect our client's interest.
>
> Our client disputes the claim and will take all steps to defend themselves if necessary. If your clients insist in proceeding with winding up action against our client, our client will hold your clients responsible for any damages or losses due to your client's action.

[8] The appellant pointed out the respondent did not respond or made any attempt to verify the matter. The appellant's affidavit, inter alia, reads as follows:

(8) The certifying officer has all along been issuing certificates for payment with reference to the petitioner, being unaware that the petitioner has been wound up as at 20 January 1997 and had not done any work.

(9) Essentially, the petitioner is claiming on certificates for work done by others for which others have been paid, and long after it had abandoned the works.

(10) I am advised by the respondent's solicitors and verily believe that the petitioner does not have any bona fide debt due to it from the respondent, and it is not a fit and proper case to found a basis for a winding up without a valid judgment.

(11) I respectfully inform the court that the respondent has suffered grievous damage financially and to its credit and reputation in that its Bankers Malayan Banking Bhd have frozen its accounts, as a result of this petition being presented.

[9] The appellant then prayed that the petition be dismissed with costs.

[10] The respondent filed an affidavit in reply and contended, inter alia, the following:

(i) that it never encountered difficulties in carrying out its obligations as the main sub-contractor;

(ii) that it never sought financial assistance from the appellant and neither has the appellant assisted through financial means;

(iii) it was the respondent which provided financial assistance to the appellant;

(iv) that the payments made directly to the sub-contractors appointed by the respondent was due to the request made by the sub-contractors and agreed upon by the appellant;

(v) that the payments made by the appellant to the sub-contractors forms part of the appellant's payment due under the said contracts and the respondent has an absolute right to assign the payment due to it to any nominated recipient if its wishes to do so and it does not in any way imply that the appellant is providing financial assistance to the respondent;

(vi) TCT was the respondent's nominated sub-contractor to carry out part of the works; the respondent's request to pay TCT 90% of the claim under progress payment No 29 was as a result of the request made by TCT for direct payment from the appellant;

(vii) the certifying officer knew that the respondent has been wound up and had carried out the works and as such had certified the payment to the respondent which was agreed by the appellant.

[11] The matter was heard on 16 October 1999. The learned judge found that the monies demanded were still due and owing to the respondent by the appellant and hence ordered that the appellant be wound up.

[12] In his grounds of decision, the learned judge said:

> 7 From the evidence adduced as contained in the various affidavits filed by the parties, it left the court with two issues to be resolved in determining this petition of the petitioner. They are:
>
> (1) whether the respondent is at all indebted to the petitioner in the sum stipulated in the petition as the amount is said to have been paid with the consent of the petitioner to third parties.
>
> (2) whether this petition of the petitioner is premature pending a reference to the arbitrator.

[13] In relation to the first issue, the learned judge said as follows:

> The following are the details of the amount of claim which form the basis of the debts extracted from the copies of the certificates in the aforesaid exh 'A' to the petition:

Progress Payment

Certificate No	Dated	Amount
(a) 31	10 Nov 97	RM195,600
(b) 32	13 Nov 97	RM142.485
(c) 33	20 Nov 97	RM129.320
Total:		RM467.405

and the certificate for final payment dated 15 October 1997 amounting to RM428.973.18, making a grand total of RM896.378.18. All the said amount was duly certified by MIS Architect and so approved by the respondent in favour of the petitioner.

[14] The learned judge was satisfied that the amount of debt as stated in the petition 'had not been established to have been paid by respondent to the petitioner'.

[15] On the second issue, the learned judge said:

9 Coming now to the last issue concerning the resolution of the dispute by the arbitrator. The contract agreements entered into between the petitioner and the respondent provide the normal arbitration referral in the event of any dispute or difference arising between them. But does it mean that the mere presence of the arbitration clause in an agreement would hinder a party from bringing in a petition for a winding up of the other party based on a debt properly established? Another factor to consider is the steps taken by either or both of the parties in trying to implement the arbitration clause. In this case, there is no evidence that any step at all is being taken by the respondent in particular, in wanting to bring its dispute to the arbitration apart from using the clause as a shield to prevent the petitioner from exercising its right under the Companies Act in getting the respondent to be wound up for failure to pay its debts within the statutory period. The evidence of debts is exh 'A' to the petition duly certified by the architect and approved by the respondent. The respondent had failed to settle the debts within the statutory period prescribed. Among the certificates in exh 'A' is one appearing on p 15 thereof wherein the respondent had taken the liberty to deduct from the total amount due, a certain proportion of it to be allocated to a third party. If the contention of the respondent that some parts of the debts in respect of other certificates are due to any third party is correct, it is expected that a similar allocation would have been done in the respective certificates. But this was not done so. Thus, in reality there is no dispute whatsoever as regards the debts established by the relevant certificates as being due from the respondent to the petitioner duly approved by the respondent. If at all there is any, it would have been a dispute between the respondent and the architect. In the circumstances, the issue has no merit at all.

[16] We noted that cl 51(b)(iii) of the first contract which relate to the construction of shophouses provides, inter alia, if the respondent 'being a company is having a winding up order made against him', the appellant may by a notice sent by registered post determine the employment of the respondent. Further, cl 54 of the first contract provides if any dispute shall arise between the parties during the progress or after the completion of the works, such dispute or difference shall be referred to the superintending officer ('SO'), viz, Messrs MIS Architects for a

decision. If the decision is not forthcoming within 45 days or if the appellant is dissatisfied with the decision, the appellant may subsequently refer the dispute or difference to arbitration.

[17] We also noted that the second contract which relate to the construction of terrace houses provides, inter alia, in the event that the respondent has a winding up order made against it, its employment 'shall be forthwith automatically determined but the said employment may be reinstated and continued' if the appellant and the liquidator shall so agree. We further noted that it is also provided therein in the event that any dispute or difference should arise between the parties either during the progress or after the abandonment of the works as to any matter or thing of whatsoever arising thereunder or in connection therewith, then such dispute shall be referred to arbitration.

[18] The respondent dispute the contention of the appellant that it was not aware that there was a winding up order made against the respondent on 20 January 1997. On perusing the documents available in the appeal record, we noted that by letter addressed to the appellant (p 83 of the appeal record) and dated 1 July 1997, ie after the winding up order has been made against the respondent, the respondent's letter-head did not convey the message that it was in liquidation. We are of the view that this would be contrary to s 283 of the Act. That section, entitled 'Notification that a company is in liquidation' reads:

> (1) Where a company is being wound up every invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall have the words 'in liquidation' added after the name of the company where it first appears therein.
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> (2) If default is made in complying with this section the company, and every officer of the company or liquidator and every receiver or manager who knowingly and wilfully authorizes or permits the default, shall be guilty of an offence against this Act.
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> Penalty: Five hundred ringgit.

[19] Thus, it would seem that the respondent and or the liquidator has committed an offence when it failed to have the words 'in liquidation' added after the name of the respondent in the said letter.

[20] Be that as it may, it is not disputed that the respondent's solicitors caused to be delivered a notice pursuant to s 218(2)(a) of the Act to the appellant at its registered office. In the said notice, the appellant was required to pay the said sum of RM896,378.18 within 21 days of receipt of the notice. It was also stated therein 'that the consequence of not complying with the requisition of this notice is that winding up proceedings may be taken against you'. The appellant replied it was disputing the debt.

[21] It is the respondent's stand that since the appellant has failed, refused and/or neglected to pay the indebtedness nor has it secured or compounded the indebtedness, appellant is therefore insolvent and unable to pay its debts and in the circumstances it is just and equitable that the appellant be wound up.

[22] Section 218 of the Act which is entitled 'Circumstances in which a company may be wound up by Court', inter alia, reads:

(1) The Court may order the winding up if —

(e) the company is unable to pay its debts;

Definition of inability to pay debts

(2) A company shall be deemed to be unable to pay its debts if —

(a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding five hundred ringgit then due has served on the company by leaving at the registered office a demand under his hand or under the hand of his agent thereunto lawfully authorized requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company.

[23] We noted that the respondent has not obtained a judgment against the appellant for the sum claimed as being due to them. The alleged debt is clearly disputed by the appellant. Section 218(1) of the Act provides, inter alia, the court may order the winding up if the company is unable to pay its debts. This would seem to be the only ground relied upon by the respondent. The respondent had sent a notice under s 218(2)(a) of the Act to the appellant demanding the total sum due amounting to RM896,378.18 for progress payments No 31 dated 10 November 1997, No 32 dated 13 November 1997 and No 33 dated 20 November 1997 and a certificate of final payment dated 15 October 1997 in respect of the said contracts. The appellant's solicitors replied, inter alia, as follows:

> TAKE NOTICE that our client Syarikat Mohd Moor Yusof Sdn Bhd, a solvent company, hereby disputes the claim or debt owing to your client. Please confirm WITHIN SEVEN (7) DAYS from the receipt of this notice that your good office will not be proceeding with winding up action against our client failing which we take the necessary steps to protect our client's interest.
>
> Our client disputes the claim and will take all steps to defend themselves if necessary. If your clients insist in proceeding with winding up action against our client, our client will hold your clients responsible for any damages or losses due to your client's action.

[24] In *Jurupakat Sdn Bhd v Kumpulan Good Earth (1973) Sdn Bhd* [1988] 3 MLJ 49, the petitioner, a building contractor filed a petition to wind up the respondent, a housing developer as the latter failed to pay for the balance of the work that the

petitioner had carried out for the respondent under an agreement together with interest. The respondent applied for an order to strike out the petition pursuant to O 18 r 19 of the Rules of the High Court 1980 and under the inherent jurisdiction of the court. In allowing the application, Zakaria Yatim J (as he then was) said (at p 50):

> It is common ground that there is no judgment debt in the present case. The question for the court to consider is whether the petitioner is a creditor and the respondent is a debtor. A creditor is a person who could enforce his claim against the company by an action of debt and a person cannot petition as a creditor when he merely has a right of action against the company for unliquidated damages for breach of contract (see *Pennington's Company Law* (5th Ed, 1985) at p 843). Where a petition is based on a debt which is disputed on substantial grounds, the petitioner is not a creditor (see *Re Lympne Investment Ltd* at p 389). If the petitioner is not a creditor, it is not entitled to present a petition or apply for a winding up order. It has no locus standi and the petition must fail (see *Mann & Anor v Goldstein & Anor* at p 771).

[25] We are aware that it is not provided under the Act that a petitioner must be armed with a judgment debt prior to the filing of a petition to wind up a company. In the matter before us, there is no judgment debt and the debt claimed is disputed. We are of the view that a notice of indebtedness issued under s 218 of the Act is not evidence of the debt.

[26] The facts showed that the appellant's paid-up capital is RM8,395,902. The respondent must substantiate its claim that the appellant is unable to pay its debts. The presumption that the appellant is unable to pay its debts cannot arise under the above circumstances as the appellant seems to be solvent. The indebtedness is clearly disputed and the sum referred to in the respondent's notice issued under s 218(2) is not a judgment sum. In our view, that notice is nothing more than a letter of demand sent by the respondent's solicitors the purpose of which is to invoke the presumption of inability to pay debts. The respondent would still have to prove that it is a creditor and that the sum so stated in the notice is owing and so due. In *Sri Hartamas Development Sdn Bhd v MBF Finance Bhd* [1992] 1 MLJ 313, at p 317 the court held the function of such a notice is to warn the debtor of an impending petition. The notice must also relate to a specified debt whose amount or existence cannot be seriously questioned. Where the amount is questionable or suspect and there is no judgment sum to support it, the petition should be dismissed. In *Re Ban Hong Co Ltd* [1959] MLJ 100, it was held that a petition instituted for the purpose of enforcing a disputed debt is an abuse of process of the court and will be dismissed with costs. Rigby J said (at p 103):

> It is well settled law that a winding up petition is not to be used as machinery to try a common law action, and that the presentation of a petition for winding up simply with a view to enforcing payment of a disputed debt is an abuse of the process of the court and should be dismissed with costs.

[27] We are of the view that this is not a proper case to grant an order of winding up. One of the issues which need to be determined is whether it was the respondent and not other sub-contractors which completed the works and consequently whether

the appellant paid directly to the respondent or to the sub-contractors for work done. We find that the respondent has not exhausted all remedies available to them as provided for under the said contracts. The dispute should be referred to the superintending officer or to arbitration as the case may be as provided for under the said contracts. There is nothing to prevent the respondent from filing a writ against the appellant if everything else fails. We would agree with the views of Rigby J expressed in *Re Ban Hong Co Ltd*. A winding up petition is not a legitimate means of seeking to enforce payment of a debt which is disputed.

[28] We are of the view that the learned judge in the court below was wrong in granting the order for the winding up of the appellant and as such we allowed this appeal with costs, set aside the order of winding up granted against the appellant on 16 October 1999 and ordered that the deposit be refunded to the appellant.

Appeal allowed with costs.

Reported by Loo Lai Mee